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June 1, 2004

Via Facsimile and First Class Mail

Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attention: Elaine Devine, Esq.

Re: Respondent MoveOn.org Voter Fund

Dear Ms. Devine:

This will respond on behalf of our client, respondent MoveOn.org Voter Fund (the "Voter Fund"), to the Complaint filed by the Republican National Committee in the above-captioned MUR. A Statement of Designation of Counsel has previously been sent to you.

The Commission should find no reason to believe that the Voter Fund has violated the Act or the Commission's regulations, and should dismiss the Complaint as to the Voter Fund, for two reasons. First, there is no basis whatsoever in the law for treating the Voter Fund as a federal political committee. Accordingly, the disbursement by the Voter Fund of funds not subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended (the "Act") was perfectly lawful. Second, the Complaint does not allege any facts at all that would show that the Voter Fund paid for a "coordinated communication" within the meaning of the Commission's regulations, 11 C.F.R. §109.21. Thus there has been no contribution or expenditure by the Voter Fund within the meaning of the Act.

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For these reasons, the Commission should find no reason to believe that the Voter Fund has violated the Act or the Commission's regulations, and should dismiss the Complaint and close the file as to the Voter Fund.

I. The Voter Fund Is Not a Federal Political Committee

The Voter Fund is a District of Columbia unincorporated association registered with the IRS as a political organization, exempt from taxation under section 527 of the Internal Revenue Code of 1986 as amended. The Voter Fund primarily educates voters on the positions, records, views and qualifications of candidates for public office. (Declaration of Wes Boyd, attached hereto ("Boyd Dec.") ¶2).

The Voter Fund is responding to this Complaint because the underlying factual dispute involves activities of the Voter Fund. The Complaint refers erroneously to MoveOn.org, which is a separate legal entity, a California nonprofit public benefit corporation exempt from federal tax under section 501(c)(4) of the Internal Revenue Code that primarily focuses on nonpartisan education and advocacy on important national issues. (Boyd Dec. ¶2).

The Voter Fund accepts donations solely from individuals who are U.S. citizens or permanent resident aliens. The Voter Fund does not accept any donations from any corporation, labor union or any other type of organization. The Voter Fund has filed several reports of "electioneering communications" with the Commission on FEC Form 9. No communication that has been disseminated by the Voter Fund has "expressly advocated" the election or defeat of any federal candidate.

The Commission has, of course, instituted a rulemaking to determine whether the *existing* rules for determining what constitutes a "political committee" should be modified. Notice of Proposed Rulemaking, 69 *Fed. Reg.* 11736 (March 11, 2004). At its meeting on May 13, 2004, the Commission rejected, by a 4-2 vote, a proposal by two Commissioners that sought to convert voter education organizations, such as the Voter Fund, into "political committees." Under the law in effect as of now, and as of all relevant times referenced in the Complaint, the Voter Fund is not and never has been a "political committee" within the meaning of the Act, 2 U.S.C. §431(4).

First, contrary to the Complaint's suggestion, at p. 6, the purpose and motivation of a communication are irrelevant, as they must be, unless the government is to begin peering into peoples' minds to determine the lawfulness of their political speech. Further, it is not, and has never been, the law that "communications referring to a clearly identified federal candidate that promote, support, attack or oppose that candidate are for the purpose of influencing a federal election" (Complaint at 9).

Rather, an organization is a federal political committee only if it spends more than \$1,000 in a year "for the purpose of influencing a federal election." 2 U.S.C. §431(9)(A). For more than 25 years, it has been the law that this definition of "expenditure" is

confined to communications that “in express terms advocate the election or defeat of a clearly identified federal candidate.” *Buckley v. Valeo*, 424 U.S. 1, 42-44 (1976).

Nothing in the Bipartisan Campaign Reform Act of 2002 (BCRA) changes that test. To the contrary, in undertaking a wholesale revision of the Federal Election Campaign Act, Congress left absolutely untouched the definitions of “political committee” and, in all pertinent respects, the definition of “expenditure.” See Notice of Proposed Rulemaking, *supra*, 69 *Fed. Reg.* at 11736-37. When Congress revises a statute, its decision to leave certain sections unchanged indicates acceptance of the preexisting construction and application of the unchanged terms. *Cottage Savings Ass’n v. Commissioner*, 499 U.S. 554, 562 (1991).

With respect to the unchanged definition of “expenditure,” the U.S. Supreme Court, in its recent decision upholding most of BCRA, *McConnell v. Commission*, 540 U.S. ___, 124 S. Ct. 619, 687-88 (2003), explicitly affirmed the *Buckley* “express advocacy” test. The *McConnell* Court characterized its earlier opinion in *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 238, 248 (1986) as reaffirming this construction of “expenditure”. The *McConnell* Court indeed confirmed that, “Since our decision in *Buckley*, Congress’ power to prohibit corporations and unions from using funds in their treasuries to finance advertisements expressly advocating the election or defeat of candidates has been firmly embedded in our law.” 124 S.Ct. at 694.

There is no question that the advertisements by the Voter Fund do not meet the “express advocacy” test. That much is clear from the texts of the Voter Fund advertisements included as Attachment K to the Complaint. In any event, the Complaint does not suggest, anywhere, that the Voter Fund has paid for any communications expressly advocating the election or defeat of any candidate for federal office. Under existing rules, the Voter Fund is free to pursue a communications strategy commenting on the policies and performance of federal officeholders, short of express advocacy. For that reason, based on the facts alleged in the Complaint, the Voter Fund is clearly not a federal “political committee” within the meaning of the Act and the Commission’s regulations.

Press articles, including some cited in the Complaint (*see e.g.*, notes 41, 32 & 45), have mistakenly attributed express advocacy or the explicit purpose to defeat President Bush to the Voter Fund or to MoveOn.org. Attached is a sample of letters written by legal counsel to those news sources clarifying the record. Those articles are hearsay evidence, and should not be considered probative evidence as to the Voter Fund’s activities or purposes. (Letters from Silk, Adler & Colvin to Associated Press dated 3/10/04, to Gannett dated 1/21/04, to New York *Times* dated 4/7/04 and to Washington *Post* dated 5/3/04).

Second, Commission Advisory Opinion 2003-37, referred to in the Complaint (at 9-10), applies by its terms only to federal political committees that are *already* registered as such with the Commission. Because the Voter Fund has never spent anything on

communications expressly advocating the election or defeat of any candidate, clearly it is not a federal political committee under current law and has not been required to register.

Contrary to the Complaint's suggestion, p. 25 n40, the Voter Fund is not a non-federal account of a federal PAC. There is a separately incorporated federal PAC, MoveOn PAC, which *is* a federal political committee registered with the Commission. The Voter Fund and the PAC are separate legal entities for tax and all other purposes. The PAC bears all of its operating and administrative expenses out of its own funds and the Voter Fund does likewise. There are no financial subsidies between them. (Boyd Dec. ¶3) Thus, unlike the federal committee in AO 2003-37, the PAC does not allocate any of its expenses to any non-federal account or fund. The Voter Fund, in itself, is simply an organization that is *not* a federal political committee and is *not* connected to a federal political committee.

By contrast, AO 2003-37 was requested by a hypothetical, basically non-existent organization that represented to the Commission that it *allocated its expenses between federal and non-federal accounts* in accordance with the Commission's regulations at 11 C.F.R. § 106.6. In that Advisory Opinion, the requesting federal political committee maintained federal and non-federal accounts, made direct contributions in connection with both federal and non-federal elections, and engaged in joint federal/non-federal voter registration and get-out-the-vote drives. In promulgating section 106.6, the Commission noted that this regulation "appl[ies] only to those committees that make disbursements in connection with federal and non-federal elections." Explanation and Justification of Regulations on Methods of Allocation Between Federal and Nonfederal Accounts; Payments; Reporting, 55 Fed. Reg. 26058, 26066 (June 26, 1990).

The Voter Fund's sole purpose is to engage in voter education on the positions, records, views and qualifications of candidates for public office. The Voter Fund has not, and will not, make any direct contributions to candidates. It is clear that section 106.6 and AO 2003-37 are inapplicable to the Voter Fund.

Third, contrary to the assertion in the Complaint (p. 9), neither the Supreme Court nor the Commission have *ever* ruled that any organization that runs any advertisement that "promotes, supports, attacks or opposes a clearly identified Federal candidate" must use regulated funds. That phrase is used in the Act, as amended by the BCRA, solely with respect to regulating the activities of *political party committees and candidates*. 2 U.S.C. §§431(20)(A)(iii), 441i(b), (d), (e) & (f). And, as noted, in AO 2003-37, the Commission borrowed that phrase to impose "hard money" requirements on an organization that is *already* a federal political committee. In doing so, the Commission took pains to point out that, "This opinion does not set forth general standards that might be applicable to other tax-exempt entities." (AO 2003-37 at 1). Indeed, the Commission has never applied that phrase—"promotes, supports, attacks or opposes"-- to any other type of organization. And the Commission certainly did not do so in Advisory Opinion 2003-37.

For these reasons, the Voter Fund is not a federal “political committee” within the meaning of the Act, 2 U.S.C. §431(4), or the Commission’s regulations, 11 C.F.R. §100.5(a); and contributions to Voter Fund are not subject to the limitations and prohibitions of the Act.

II. The Voter Fund Has Not Paid for Any Coordinated Communications

Although the Complaint broadly alleges that the Voter Fund has “illegally coordinated” its activities with the Kerry for President Campaign and/or the Democratic Party (e.g., Complaint at 6, 25-26), the Complaint actually does not allege any facts at all which, even if true, would show that any of the Voter Fund’s advertising would constitute a “coordinated communication” within the meaning of the Commission’s rules, 11 C.F.R. §109.21. In any event, the Voter Fund has not in fact paid for any such “coordinated communications.”

Under the Commission’s regulations, an expenditure for a communication is “coordinated” with a party committee or federal candidate in a way that results in an unlawful in-kind contribution to that committee or candidate, if the communication meets a two-part test—a “content” standard and a “conduct” standard. 11 C.F.R. §109.21 To meet the “content” standard, a communication must, at a minimum, be a “public communication” that at least refers to a political party or to a clearly identified candidate for Federal office. *Id.* § 109.21(c). All of the Voter Fund’s advertising met this standard.

Nothing in the Complaint, however, even remotely suggests that the “conduct” standard, 11 C.F.R. §109.21(d), has been met with respect to any of the Voter Fund’s advertising. First, the Complaint alleges that “MoveOn has made no secret of its ongoing communications with Democratic Party officials” and that “Moveon officials have talked to a variety of party officials about organizing and fundraising next year.” (Complaint at 26). The news articles cited to support those charges, however, described in footnote 43, say only that a scheduled meeting with Senate Democrats was postponed and that “MoveOn” met with House Democratic leaders. The only federal candidate ever referenced in the Voter Fund’s advertising is President Bush. (Boyd Dec. ¶5). There is no indication in the Complaint that anyone at the Voter Fund ever communicated with President Bush’s presumptive opponent, Senator John F. Kerry (D-MA), or Senator Kerry’s campaign, and it is clear that the Voter Fund’s advertising has nothing to do with members of the U.S. House of Representatives.

In any event, the Voter Fund is submitting, with this response, sworn statements from the two persons who decided on the content, timing, frequency, etc. of the Voter Fund advertising: Voter Fund president Wes Boyd and media consultant Bill Zimmerman. Those sworn statements confirm that that there has never been any discussion with the Kerry Campaign or any committee of the Democratic Party of any information that could in any way be material or relevant to the Voter Fund’s advertising, and that in any way relates to the plans, projects, strategies, activities or needs of either

the Kerry Campaign or the Democratic Party. (Boyd Dec. ¶¶6-7; Declaration of Bill Zimmerman ("Zimmerman Dec.") ¶¶ 5-6).

Second, the Complaint refers to an "East Bay for Kerry/MoveOn House party" allegedly attended by Teresa Heinz Kerry in person, and to which Senator Kerry allegedly called in. (Complaint at 26; *see* Complaint Attachment G). As explained in the attached Declaration of Eli Pariser, who organized the house parties that took place on December 7, 2003 on behalf of the Voter Fund, the Voter Fund had asked its supporters to host parties in their own homes to show a video which was made available as a premium to Voter Fund supporters who made a contribution to the Voter Fund. (Declaration of Eli Pariser ("Pariser Dec.") ¶ 3). Hosts of these parties were asked to invite their friends and neighbors to view the video; it was up to each host to decide whether to serve food or beverages, and all costs of each party at each host's home were paid by the host. (*Id.*). There were 2,200 such house parties, organized remotely through the Internet. (*Id.* ¶4). No one at the Voter Fund was aware that Ms. Kerry had allegedly attended one of those house parties or that Senator Kerry allegedly had called in to the party. (*Id.* ¶ 5). No one who attended that house party ever communicated with any officer, employee or agent of the Voter Fund about Ms. Kerry's attendance or Senator Kerry's call or ever learned anything (other than through press reports) about what Ms. Kerry or Senator Kerry might have said at that house party. (*Id.*) Furthermore, no Voter Fund employee nor or any other person involved in the process of creating communications for the Voter Fund was in attendance at that event. (*Id.*). It is ludicrous to conclude that anything about this one house party indicates that there was communication of information to the Voter Fund about the plans, projects, needs or activities of the Kerry Campaign in a way that would remotely meet the "conduct" standard of the Commission's rules.

Third, the complaint alleges that the Voter Fund has coordinated its activities with those of other section 527 organizations, (Complaint at 27). Even if that were true, the Commission has made absolutely clear that independent groups that are not federal political committees may freely coordinate with each other. *See* AO 2003-37.

Fourth, the Complaint alleges that Eli Pariser has "simultaneously participated in supposedly independent broadcast advertisements attacking and opposing president Bush...while at the same time writing fundraising letter directly for the John Kerry for President campaign." (Complaint at 32). In fact, Mr. Pariser first worked for the Voter Fund; he later became executive director of MoveOn PAC. (Pariser Dec. ¶ 1). The fundraising "letter" referred to was in fact an e-mail sent out by MoveOn PAC, and there was no discussion whatsoever of the content, timing or audience of this e-mail by Mr. Pariser or anyone else at the PAC or Voter Fund, with the Kerry Campaign, before the e-mail was sent by the PAC. (*Id.* ¶7). The only discussions of any kind were by Moveon PAC to the Kerry campaign on the day the e-mail was sent, or possibly the day before, to alert the Kerry Campaign that it would be receiving numerous hits on its website as a result of the PAC e-mail. (*Id.*). In short, there was no communication or discussion

whatsoever, between the Voter Fund or the PAC, and the Kerry Campaign, of anything that would be remotely material to the Voter Fund's advertising.¹

Finally, the Complaint alleges in conclusory terms that the Voter Fund's advertising buys have been coordinated with the Kerry Campaign. As evidence for this charge, the Complaint cites the fact, first, that the Voter Fund ran advertisements in the same markets as the Kerry Campaign. (Complaint at 51-52). Of course, these were the same markets in which the Bush-Cheney campaign had already begun to run its own advertising. Further, the Complaint itself indicates that first the Voter Fund would buy time in a particular market "and two to three days *later* the Kerry campaign came in and bought the remaining time" in that market. (*Id.* at 52)(emphasis added). It is impossible to see how this pattern indicates any collusion or coordination between the Voter Fund and the Kerry Campaign, in particular, how such a pattern could possibly indicate that the Voter Fund had *prior* knowledge of the Kerry campaign's plans, projects, needs, etc. based on the campaign's conduct *subsequent* to the Voter Fund placing its buys.

In any event, the Voter Fund's decisions about the markets in which to buy were based solely on its own polling and publicly available information, including information about where Bush-Cheney '04 had already begun to run its own advertising. (Boyd Dec. ¶ 4; Zimmerman Dec. ¶7). Again, there was *no* discussion or communication at *any* time between the Voter Fund and the Kerry Campaign (or the Democratic Party) of any information that could be in any way material or relevant to the Voter Fund's advertising and that related to the plans, projects, activities or needs of the Kerry Campaign or the Democratic Party. (Boyd Dec. ¶¶6-7; Zimmerman Dec. ¶¶5-6). There was *no* discussion or communication between the Kerry Campaign and the Voter Fund, at any time, about *any* aspect of the Voter Fund's advertising. (Boyd Dec. ¶7; Zimmerman Dec. ¶¶5-6).

In addition, the Complaint suggests that the Voter Fund, and the Kerry Campaign "divided up the day parts in a coordinated effort" to have messages from one of the groups on the air "to counter Bush-Cheney '04 in their selected markets." (Complaint at 53). But the evidence cited—

—shows only that all three organizations advertised during all parts of the day. In any event, as explained in the Zimmerman Declaration, the Voter Fund bought its time in terms of "gross rating points," so that the stations themselves—not the Voter Fund or its media consultant or media buyer—decided what times of day the advertisements would be run. (Zimmerman Dec. ¶8).

In short, there is simply no evidence set forth in the Complaint that would indicate that the Voter Fund paid for any communications in any circumstances in which the "conduct" standard of the Commission's rules was met. The Commission has no authority whatsoever to find "reason to believe" based on a Complaint which utterly fails

¹ Of course, in no event could an e-mail communication be a "coordinated communication" because Internet communications are not "public communications" and by definition do not meet the "content" standard of the Commission's coordination rules. 11 C.F.R. §§ 100.26; 109.21(c)

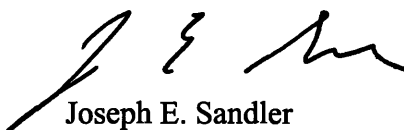
to allege a violation of the Act or Commission's rules. See MUR 5338, The Leadership Forum *et al.*, Statement of Reasons of Vice Chairman Smith at pp. 2-3 ("Complaints must allege an actual violation in order to be legally sufficient to trigger an investigation....").

For these reasons, the Complaint does not set forth any cognizable allegation of impermissible coordination and there has never, in fact, been any such impermissible coordination of advertising by the Voter Fund with the Kerry Campaign or the Democratic Party.

CONCLUSION

For the reasons set forth above, the Commission should find no reason to believe that the Voter Fund has violated the Act or the Commission's regulations and should dismiss the Complaint and close the file, as to respondent MoveOn.org Voter Fund.

Respectfully submitted,



Joseph E. Sandler
Neil P. Reiff
Attorneys for Respondent
MoveOn.org Voter Fund

Attachments:

Declaration of Wes Boyd
Declaration of Eli Pariser
Declaration of Bill Zimmerman
Letters to media outlets

BEFORE THE FEDERAL ELECTION COMMISSION

In re:

Complaint of Republican National
Committee, et. al.,MoveOn.org Voter Fund,
Respondent

) Matter Under Review

DECLARATION OF WES BOYD

1. I serve as president of MoveOn.org Voter Fund (the "Voter Fund"), the respondent in the above-referenced Matter Under Review. I have served in that capacity continuously since the Voter Fund was formed. I make this Declaration in support of the response filed by the Voter Fund to the Complaint filed by the Republican National Committee et al., in this Matter.

2. There are three separate MoveOn organizations. MoveOn.org, a California nonprofit public benefit corporation exempt from taxation under section 501(c)(4) of the Internal Revenue Code, primarily focuses on nonpartisan education and advocacy on important national issues. The Voter Fund, a District of Columbia unincorporated association that is exempt from taxation under section 527 of the Code but that is not a federal political committee, primarily educates voters on the positions, records, views and qualifications of candidates for public office. MoveOn PAC, a California nonprofit mutual benefit corporation and a nonconnected federal political committee registered with the Commission (the "PAC"), primarily helps elect candidates to federal office.

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3. The Voter Fund and the PAC are separate legal entities for tax and all other purposes. The PAC pays all of its operating and administrative expenses out of its own funds. The Voter Fund bears all of its operating and administrative expenses out of its own funds. There are no financial subsidies between them.

4. The Voter Fund has paid for broadcast advertising. The decisions about the content, intended audience, media markets, timing and frequency of the Voter Fund's advertising have been made and continue to be made by me, based on advice from the Voter Fund's media consultant, Bill Zimmerman of Zimmerman & Markman, Inc. of Santa Monica, California.

5. The only candidate for federal office that has ever been referenced in the Voter Fund's advertising is President George W. Bush.

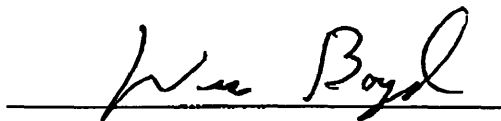
6. I have never discussed any aspect whatsoever of the Voter Fund's advertising, before, during or after the periods in which such advertising has been run, with any officer, employee or agent of the Kerry for President Campaign or of any committee of the Democratic Party. I have never discussed or learned any information whatsoever, from any discussions or communications with any officer, employee or agent of the Kerry for President Campaign or of any committee of the Democratic Party, which information was in any way useful, relevant or material to the creation, production, timing, placement, frequency or any other aspect at all of the Voter Fund's broadcast advertising, and which in any way related to the plans, projects, activities or needs of the Kerry for President Campaign or of any committee of the Democratic Party.

7. To my knowledge, no officer, employee, agent, or consultant of the Voter Fund has ever discussed or communicated about any aspect whatsoever of the Voter

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Fund's advertising, before during or after the periods in which such advertising has been run, with any officer, employee or agent of the Kerry for President Campaign or of any committee of the Democratic Party. To my knowledge, no officer, employee, or agent of the Voter Fund, of MoveOn.org or of the PAC, has ever received or learned any information whatsoever, from any discussions or communications with any officer, employee or agent of the Kerry for President Campaign or of any committee of the Democratic Party, which information was in any way useful, relevant or material to the creation, production, timing, placement, frequency or any other aspect at all of the Voter Fund's broadcast advertising and which related to the plans, projects, activities or needs of the Kerry for President Campaign or of any committee of the Democratic Party.

I declare under penalties of perjury that the foregoing is true and correct to the best of my present knowledge, information and belief. Dated this 28 day of May 2004.

A handwritten signature in cursive script, appearing to read "Wes Boyd", is written over a horizontal line.

Wes Boyd

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BEFORE THE FEDERAL ELECTION COMMISSION

In re:

**Complaint of Republican National
Committee, et. al.,**

**MoveOn.org Voter Fund,
Respondent**

Matter Under Review

DECLARATION OF BILL ZIMMERMAN

1. I serve as president of Zimmerman & Markman, Inc. of Santa Monica, California. Our firm serves as the media consultant to MoveOn.org Voter Fund (the "Voter Fund"), the respondent in the above-referenced Matter Under Review. Our firm has served as media consultant to the Voter Fund for all of the paid advertising the Voter Fund has run since it was formed.

2. I make this Declaration in support of the response filed by the Voter Fund to the Complaint filed by the Republican National Committee et al., in this Matter.

3. I have advised the Voter Fund about the content, intended audience, media markets, timing and frequency of the Voter Fund's advertising.

4. The only candidate for federal office that has ever been referenced in the Voter Fund's advertising is President Bush.

5. I have never discussed any aspect whatsoever of the Voter Fund's advertising, before during or after such advertising has been run, with any officer, employee or agent of the Kerry for President Campaign or of any committee of the Democratic Party. I have never discussed or learned any information whatsoever, from

any discussions or communications with any officer, employee or agent of the Kerry for President Campaign or of any committee of the Democratic Party, about the plans, projects, activities or needs of the Kerry for President Campaign or of any committee of the Democratic Party, at any time.

6. To my knowledge, no officer, employee or agent of my firm has ever discussed or communicated about any aspect whatsoever of the Voter Fund's advertising, before, during or after the periods in which such advertising has been run, with any officer, employee or agent of the Kerry for President Campaign or of any committee of the Democratic Party. To my knowledge, no officer, employee, or agent of my firm has ever received or learned any information whatsoever, from any discussions or communications with any officer, employee or agent of the Kerry for President Campaign or of any committee of the Democratic Party, about the plans, projects, activities or needs of the Kerry for President Campaign or of any committee of the Democratic Party, at any time.

7. With respect to the Complaint's allegations, on pages 52 and 53 of the Complaint, the media markets in which these Voter Fund advertisements were run were selected by Voter Fund president Wes Boyd and myself based solely on polling paid for and used by the Voter Fund, and on publicly available information about where the Bush-Cheney '04 campaign was running its own advertising. The timing of Voter Fund advertising was determined by Wes Boyd and myself based on publicly available information about when the Bush-Cheney campaign was running its own advertisements.

8. The allegation on page 53 of the Complaint that the Kerry Campaign, the Voter Fund "divided up the day parts" is baseless. Not only was

there no discussion whatsoever, about anything, with the Kerry Campaign, but the times of day during which Voter Fund advertisements were run were determined primarily by the broadcast stations on which they were run. The Voter Fund purchased broadcast time in terms of "gross rating points," in which the station contracts to run the advertisement with such frequency and at such times to reach a designated percentage of a certain type of household a particular number of times during the period in which the advertisement is scheduled to run, based on standard ratings information. The only exception occurs in the case of certain "prime time" programming in which I or my agents designate a specific program in which we want an advertisement to appear and the station then determines the exact time at which the advertisement is run.

I declare under penalties of perjury that the foregoing is true and correct to the best of my present knowledge, information and belief. Dated this 28 day of May 2004.



Bill Zimmerman

BEFORE THE FEDERAL ELECTION COMMISSION

In re:

Complaint of Republican National
Committee, et. al.,

MoveOn.org Voter Fund,
Respondent

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DECLARATION OF ELI PARISER

1. I currently serve as Executive Director of MoveOn PAC, a federal political committee registered with the Commission (the "PAC"). I have held this position since approximately February of this year (2004). From approximately November 2003 until February 2004, I served as campaign director of the MoveOn.org Voter Fund (the "Voter Fund"), a political organization that is not a federal political committee. The Voter Fund is the respondent in the above-referenced Matter Under Review. I make this Declaration in support of the response of the Voter Fund to the complaint filed by the Republican National Committee, *et al.*, in this Matter.

2. While working for the Voter Fund, I was responsible for the organization of a program in which citizens were contacted and asked to hold parties in their own homes, on December 7, 2003, for the purpose of viewing a documentary entitled *Uncovered*. Those hosting these house parties were asked to invite their friends and neighbors to view the video

3. The Voter Fund purchased copies of the video displayed at the house party in bulk, and offered them to members in exchange for a contribution to the Voter Fund.

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Copies of the video were shipped directly from the distributor to hosts who made such contributions. Each host served whatever food and/or beverage he or she wanted to offer, and paid the costs for the food and beverage and any other costs associated with holding the party. No funds were to be solicited for any organization or entity, except the Voter Fund, at these house parties. If any funds were collected at the house party referred to on page 26 of the Complaint, the Voter Fund never received those funds and, indeed, was never made aware of their existence or the fact they were raised. The Voter Fund did not instruct party hosts to invite any candidates or coordinate with any candidate, campaign or political committee, but many parties were public and persons associated with various local, state and federal campaigns may have attended in their individual capacities.

4. Approximately 2,200 of these house parties were held across the United States, on December 7, 2003. They were organized through the Internet, with virtually no face-to-face or even telephone contact with party hosts.

5. I never spoke with the host or hostess of the house party held in California and referred to on page 26 of the Complaint regarding that event. No officer or employee of the Voter Fund was aware that Teresa Heinz Kerry had allegedly attended the event or that Senator John Kerry had allegedly called into the event, until press stories appeared after the event was held. To my knowledge, no one who attended that house party ever communicated with any officer, employee or agent of the Voter Fund about Ms. Kerry's attendance or Senator Kerry's call, or about anything else that transpired at that house party. To my knowledge, no officer or employee of the Voter Fund or of any of its consultants was present at the house party. If Ms. Kerry or Senator Kerry said

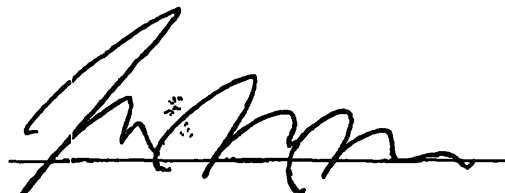
anything at that house party, nothing either said was ever communicated in any way to me or to any officer, employee or agent of the Voter Fund.

6. The fund-raising e-mails for Senator Kerry's campaign, referred to on page 32 of the Complaint, were sent and paid for by the PAC, the federal political committee, while I was serving as executive director of the PAC.

7. In any event, there was no discussion whatsoever concerning any aspect of this email solicitation by myself or, to my knowledge, by any other officer, employee or agent of the PAC or the Voter Fund, with the Kerry for President Campaign, prior to the sending of those e-mails, except for several phone calls that I made to the campaign the day the e-mails were going out or the day before, to warn the Campaign that they might be receiving large numbers of hits on their website as a result of the PAC e-mail solicitation.

8. There was no discussion whatsoever, prior to that day, by myself or to my knowledge any other officer, employee or agent of the PAC or the Voter Fund, with anyone at the Kerry Campaign, concerning the content, timing, targeting or any other aspect whatsoever of the PAC e-mail solicitation on behalf of the Kerry Campaign.

I declare under penalties of perjury that the foregoing is true and correct to the best of my present knowledge, information and belief. Dated this 1 day of JUNE 2004.


Eli Pariser

SILK, ADLER & COLVIN

A LAW CORPORATION

THOMAS SILK
BETSY BUCHALTER ADLER
GREGORY L. COLVIN
ROSEMARY E. FEI
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March 10, 2004

VIA E-MAIL

John Affleck, AP National Reporting Editor
Associated Press

David Satterfield, Managing Editor
The Mercury News

Dear Mr. Affleck and Mr. Satterfield:

We're writing on behalf of the nonprofit organization MoveOn.org and its affiliated entities known as MoveOn.org Voter Fund and MoveOn PAC, each of whom we represent.

In your otherwise excellent article of January 10, 2004 entitled "MoveOn.org becomes anti-Bush online powerhouse" Ms. Fouhy mentions the Voter Fund and the PAC but fails to distinguish between the activities of each organization. While the confusion is not surprising, we want to be on the record with this letter of clarification.

MoveOn.org is a non-profit organization recognized as tax-exempt under Section 501(c)(4) of the Internal Revenue Code. MoveOn.org exists to alert the American people to issues in the public policy arena and to encourage them to use their power as citizens to make their views known.

MoveOn.org Voter Fund, on the other hand, is a discrete, affiliated Section 527 political organization that is legally separate from MoveOn.org. The advertising contest and the ad campaign critical of the Bush administration mentioned in the article both have been sponsored and paid for by the Voter Fund, not MoveOn.org. In addition, the \$5 million matching grant offered by George Soros and Peter Lewis was pledged to the Voter Fund.

The article also states that the Soros/Lewis pledge is meant "to create a \$15 million advertising campaign to defeat President Bush." This statement is untrue. Although MoveOn.org and the Voter Fund may be critical of the positions and policies of the Bush

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John Affleck
David Satterfield
March 10, 2004
Page 2

administration, neither organization expressly advocates the election or defeat of any particular Presidential candidate.

Lastly, the article refers to MoveOn as a fundraising vehicle for Democrats and states that the organization "has raised millions to support candidates." MoveOn.org and the Voter Fund do not advocate the election of, financially support, or coordinate their activities with any political party or candidate for elected office. Any candidate funding has been generated exclusively by MoveOn PAC, a political committee under the Federal Election Campaign Act of 1971 that is legally separate from both MoveOn.org and the Voter Fund.

Federal tax law requires that various forms of advocacy activity be conducted by different types of tax-exempt entities. Our clients take great pains to adhere to these requirements and make these organizational distinctions clear to the media. Should the occasion arise again for you to mention any of these organizations, please consult us if you need clarification.

Very truly yours,

SILK, ADLER & COLVIN



By:

David A. Levitt

DAL:lk1

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January 21, 2004

VIA E-MAIL

Fran Mears, Managing Editor
Gannett News Service

Dear Ms. Mears:

We represent the online organization MoveOn.org and its affiliated entity MoveOn.org Voter Fund.

In your article of December 4, 2003 ("Liberal group to launch anti-Bush ads in Nevada"), your reporter, Chuck Raasch, incorrectly identified MoveOn.org as a Section 527 political organization. In addition, Mr. Raasch did not mention the Voter Fund and failed to distinguish between its activities and those of MoveOn.org. While the confusion is not surprising, we want to be on the record with this letter of clarification.

MoveOn.org is a non-profit organization that is tax-exempt under Section 501(c)(4) of the Internal Revenue Code. The organization exists to alert the American people to issues in the public policy arena and to encourage them to use their power as citizens to make their views known.

MoveOn.org Voter Fund, on the other hand, is a discrete, affiliated Section 527 political organization that is legally separate from MoveOn.org. Both the \$15 million advertising campaign mentioned in the article and the house parties organized across the country on December 7 to screen the documentary *Uncovered* are activities sponsored and paid for by the Voter Fund, not MoveOn.org. Similarly, the pledges offered by George Soros and Peter Lewis mentioned in the article have been provided to the Voter Fund.

Our clients will do their best in the future to make these important, if rather cumbersome, organizational distinctions clear to your reporters. We encourage you to make sure that your reporters are attuned to the importance of these distinctions.

/

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Fran Mears, Managing Editor
Gannett News Service
January 21, 2004
Page 2

Very truly yours,

SILK, ADLER & COLVIN

A handwritten signature in black ink, appearing to read "David A. Levitt", written in a cursive style.

By:

David A. Levitt

DAL:lk1

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April 7, 2004

VIA E-MAIL

Letters to the Editor
The New York Times
229 West 43rd Street
New York, NY 10036

To the Editor:

We're writing on behalf of the nonprofit organization MoveOn.org and its affiliated entity known as MoveOn.org Voter Fund, both of whom we represent.

In your article of February 12, 2004 entitled "Activist Group Plans New Ads Attacking Bush in Swing States," Mr. Rutenberg discusses a television ad critical of President Bush that is to run in certain swing states, including Florida and Missouri. This ad campaign, as well as the contest that produced the ad, "Bush in 30 Seconds," is being sponsored and paid for by MoveOn.org Voter Fund, a discrete, affiliated political organization that is legally separate from MoveOn.org.

The article also states that "MoveOn.org's intent is to hurt Mr. Bush's chances in the fall." That statement is untrue. Although MoveOn.org and the Voter Fund may be critical of the positions and policies of the Bush administration, please note that neither organization expressly advocates the election or defeat of any particular Presidential candidate.

Federal tax law requires that various forms of advocacy activity be conducted by different types of tax-exempt entities. MoveOn.org and the Voter Fund must take great pains to adhere to these requirements and make these organizational distinctions clear to

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Letters to the Editor
The New York Times
April 7, 2004
Page 2

the media. Should the occasion arise again for you to mention either of these organizations, please consult us if you need clarification.

Very truly yours,

SILK, ADLER & COLVIN



By:

David A. Levitt

DAL:lk1

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May 3, 2004

VIA E-MAIL

Steve Coll
Managing Editor
Washington Post

Mr. Coll:

We're writing on behalf of the nonprofit organization MoveOn.org and its affiliated entities known as MoveOn.org Voter Fund and MoveOn PAC, each of whom we represent.

We previously wrote you on December 15, 2003 to clarify the existence of both MoveOn.org and the Voter Fund and to distinguish between the activities of each organization. We are writing to provide further clarification regarding your articles of March 10, 2004 entitled "Democrats Forming Parallel Campaign" and March 22, 2004 entitled "Kerry Campaign Relying on Help of Groups' Ads." In these articles, your writers fail to mention the existence of the Voter Fund and the PAC and do not distinguish between the activities of each organization.

In "Democrats Forming Parallel Campaign", your writers refer to MoveOn.org as "part of the umbrella operation established by Democratic organizations" designed "to supplement the activities of Sen. John F. Kerry's campaign in the effort to defeat President Bush." In the second article, "Kerry Campaign Relying on Help of Groups' Ads", your writers refer to MoveOn.org as a "pro-Democratic group". These statements are incorrect. Neither MoveOn.org nor the Voter Fund advocates the election or defeat of, financially supports, or coordinates its activities with any political party or candidate for elected office, including Senator Kerry.

MoveOn PAC, a third organization, is a political committee under the Federal Election Campaign Act of 1971 that is legally separate from both MoveOn.org and the Voter Fund. Only the PAC advocates the election or defeat of any candidates for elected office and provides any support, financial or otherwise, to such candidates.

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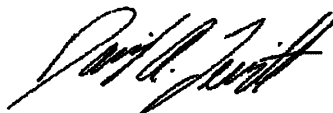
Steve Coll, Managing Editor
Washington Post
May 3, 2004
Page 2

These two articles also incorrectly attribute certain Voter Fund activities to MoveOn.org. In "Democrats Forming Parallel Campaign", your writers state that "MoveOn.org already has spent millions of dollars on anti-Bush ads." In "Kerry Campaign Relying on Help of Groups' Ads", your writers state that MoveOn.org has spent millions on television advertising. In fact, the Voter Fund, and not MoveOn.org, is sponsoring a multi-million dollar ad campaign in swing states critical of the Bush administration, including the prescription drug ad mentioned in the first article. Similarly, the Voter Fund, not MoveOn.org, has received contributions from George Soros and Peter Lewis.

Federal tax and election law require that various forms of advocacy activity be conducted by different types of tax-exempt entities. Our clients take great pains to adhere to these requirements and make these organizational distinctions clear to the media. Should the occasion arise again for you to mention any MoveOn entity, please consult us if you need clarification.

Very truly yours,

SILK, ADLER & COLVIN



By:

David A. Levitt

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